

TERMS AND CONDITIONS
FOR SENATE BILL 5X GRANTS
(Amended June 11, 2001)

AWARD # - -



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TERMS AND CONDITIONS

1. GRANT AGREEMENT

This project is being funded with a grant from the California Energy Commission (Commission). Funding for this project was authorized by Senate Bill No. 5 (Extraordinary Session 1), Chapter 1, Statutes of 2001, and consists of funds from the General Fund.

This agreement is comprised of the grant funding award, the Terms and Conditions, and all attachments. These Terms and Conditions are standard requirements for grant awards. The Commission may impose additional special conditions in this grant agreement which address the unique circumstances of this project. Special conditions that conflict with these standard provisions take precedence.

The recipient shall sign all six copies of this agreement and return five signed packages to the Commission's Grants and Loans Office within 5 days. Failure to meet this requirement may result in the forfeiture of this award. When all required signatures are obtained, an executed copy will be returned to the recipient.

Commission-funded work cannot begin prior to the agreement term date (date of approval by Efficiency Committee). This agreement is not effective until it is signed by all parties. All work must be performed during the term of the agreement.

2. ATTACHMENTS AND REFERENCES

The following are attached and hereby expressly incorporated into this agreement.

- Work Statement.
- Budget.
- Resolution of the Recipient or Local Jurisdiction Governing Body (if applicable).
- Resolution/Approval of the California Energy Commission.
- Special Conditions

The Office of Management and Budget (OMB) Circulars and/or federal regulations identified below are incorporated by reference as part of this agreement. These Terms and Conditions and any Special Conditions take precedence over the circulars and/or regulations. OMB Circulars may be accessed on the OMB web site at www.whitehouse.gov/omb/circulars/index.html or by calling the Office of Administration, Publications Office, at (202) 395-7332.

- Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

- OMB Circular A-110: Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (also applicable to private entities)
- OMB Circular A-87: Cost Principles for State, Local and Tribal Governments
- OMB Circular A-21: Cost Principles Applicable to Grants, Contracts, and Other Agreements with Institutions of Higher Education (public and private colleges and universities)
- OMB Circular A-122: Cost Principles Applicable to Grants, Contracts, and Other Agreements with Non-Profit Organizations (non-profit organizations and individuals, except for those specifically exempted)
- OMB Circular A-133: Audits of States, Local Governments, and Non-Profit Organizations
- Title 48 CFR, Ch. 1, Subpart 31.2: Contracts with Commercial Organizations (Supplemented by 48 CFR, Ch. 9, Subpart 931.2 for Department of Energy grants) (commercial firms and certain non-profit organizations)
(www.access.gpo.gov/nara/cfr/cfr-table-search.html)

3. *FUNDING LIMITATIONS*

Any federal, state, and local laws and regulations applicable to your project not expressly listed in this agreement are incorporated herein as part of this agreement.

4. *DUE DILIGENCE*

The recipient is required to take timely actions which, taken collectively, move this project to completion. The Commission Project Manager will periodically evaluate the schedule for completion of Work Statement tasks. If the Commission Project Manager determines (1) the recipient is not being diligent in completing the tasks in the Work Statement or (2) the time remaining in the funding award is insufficient to complete all project work tasks not later than the agreement term date, the Project Manager may recommend to the Policy Committee that this agreement be terminated, and the Committee may, without prejudice to any of its remedies, terminate this agreement.

5. *PRODUCTS*

Products are defined as any tangible item specified in the Work Statement. Unless otherwise directed, draft copies of all products identified in the Work Statement shall be

submitted to the Commission Project Manager for review and comment. The recipient will submit an original and two copies of the final version of all products to the Commission Project Manager.

6. *REPORTS*

a. Progress Reports

The recipient shall submit progress reports to the Commission Project Manager as indicated in the Special Conditions or Work Statement. At a minimum, each progress report shall include the following:

Work Statement: This section should include a brief restatement of the approved tasks in the Work Statement and a report on the status of each. Included should be a discussion of any products due and whether or not the project is progressing according to schedule. This section also should include a discussion of any problems encountered, proposed changes to the tasks in the Work Statement, and anticipated accomplishments in the upcoming quarter.

Financial Status: This section should include a task-by-task narrative report comparing costs to date with the approved Budget. The report should state whether or not the project is progressing within the approved Budget and discuss any proposed changes.

Additional Information: Additional information required in the progress reports may be specified in the Work Statement or Special Conditions.

b. Final Reports

A draft final report shall be submitted to the Commission Project Manager no later than 30 days prior to the end of the agreement term. At a minimum, the report shall include:

- Table of Contents.
- Abstract.
- A brief summary of the objectives of the project and how these objectives were accomplished.
- Any findings, conclusions, or recommendations for follow-up or ongoing activities that might result from the successful completion of the project.
- A statement of future intent of the grant recipient to maintain or further develop the project.
- A Payment Request form for the final payment (including any retention).

- Any additional information specified in the work statement or special conditions.

The Commission Project Manager will review the draft report. The recipient will incorporate applicable comments and submit the final report (the original and two copies) to the Commission Project Manager.

Upon receipt of the final report, the Commission Project Manager shall ensure that all work has been satisfactorily completed.

c. **Rights in Reports**

The Commission reserves the right to use and reproduce all reports and data produced and delivered pursuant to this agreement, and reserves the right to authorize others to use or reproduce such materials. Each report becomes the property of the Commission.

d. **Failure to Comply with Reporting Requirements**

Failure to comply with the reporting requirements contained in this award will be considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or of unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards.

7. *LEGAL STATEMENT ON REPORTS AND PRODUCTS*

No product or report produced as a result of work funded by this program shall be represented to be endorsed by the Commission, and all such products or reports shall include the following statement:

LEGAL NOTICE

This document was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. The Commission, the State of California, its employees, contractors, and subcontractors make no warranty, express or implied, and assume no legal liability for the information in this document; nor does any party represent that the use of this information will not infringe upon privately owned rights.

8. *AMENDMENTS*

Changes to the Work Statement, changes to specific line items in the budget, or both, may be made under certain conditions. Such changes must not alter the original scope or purpose of the project or program as proposed in the grant application. Such changes must not appreciably affect the value of the project or program. Work Statement changes and/or cumulative transfers among budget line items that exceed 10 percent of the grant award require advance written approval of the Commission Project Manager and Grants and Loans Office. All requests must be submitted directly to the Commission Project Manager in writing and include a description of the proposed change, revised attachment(s), and the reasons for the change. If the change is approved, the affected sections of the agreement will be amended and signed by the Commission Project Manager, Grants and Loans Office, and the recipient's authorized representative.

9. *CONTRACTING AND PROCUREMENT PROCEDURES*

This section provides general requirements for an agreement between the recipient and a third party ("subcontractor").

The recipient is required, where feasible, to employ contracting and procurement practices that promote open competition for all goods and services needed to complete this project. Recipient shall obtain price quotes from an adequate number of sources for all subcontracts.

Subcontracting criteria are specified in the applicable OMB Circulars incorporated by reference in this agreement. The Commission will defer to the recipient's own regulations and procedures as long as they reflect applicable state and local laws and regulations and are not in conflict with the minimum standards specified in this agreement and any OMB Circulars incorporated by reference in this agreement.

Upon request, the recipient must submit to the Commission Project Manager a copy of all solicitations for services or products required to carry out the terms of this agreement, copies of the proposals or bids received, and copies of subcontracts executed. If a specific subcontractor was identified in the original grant application and the grant was evaluated based in part on this subcontractor's qualifications, then prior written approval from the Commission Project Manager is required before substituting a new subcontractor.

The recipient is responsible for handling all contractual and administrative issues arising out of or related to any subcontracts it enters into under this agreement.

All subcontracts must incorporate all of the following:

- A clear and accurate description of the material, products, or services to be procured as well as a detailed budget and timeline.

- Provisions which allow for administrative, contractual, or legal remedies in instances where subcontractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
- Provisions for termination by the recipient including termination procedures and the basis for settlement.
- Language conforming to the "Nondiscrimination" provision in this agreement.
- Any additional requirements specified in the OMB Circulars incorporated by reference in this agreement.
- The Standard of Performance provisions specified in this agreement.
- Audit provisions regarding record retention specified in this agreement.
- Language conforming to the "Indemnification" provision in this agreement.
- Language conforming to the "License" provision in this agreement.

Failure to comply with the above requirements may result in the termination of this agreement.

10. BONDING AND INSURANCE

The recipient will follow its own bonding and insurance requirements relating to bid guarantees, performance bonds, and payment bonds without regard to the dollar value of the subcontract(s) as long as they reflect applicable state and local laws and regulations and are not in conflict with the minimum standards specified in the OMB Circulars incorporated by reference in this agreement.

11. PERMITS AND CLEARANCES

The recipient is responsible for ensuring all necessary permits and environmental documents are prepared and clearances are obtained from the appropriate agencies.

12. EQUIPMENT

Title to equipment acquired by the recipient with grant funds shall vest in the recipient. The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by grant funds and shall not encumber the property without Commission Project Manager approval. When no longer needed for the original project or program, the recipient shall contact the Commission Project Manager for disposition instructions.

Recipient should refer to the OMB Circulars and/or federal regulations incorporated by reference in this agreement for additional equipment requirements.

13. TERMINATION

This project may be terminated for any reason set forth below.

a. With Cause

In the event of any breach by the recipient of the conditions set forth in this agreement, the Commission or Committee, whoever approved the award, may, without prejudice to any of its legal remedies, terminate this agreement for cause upon five (5) days written notice to the recipient.

b. Without Cause

The Commission or Committee, whoever approved the award, may, at its option, terminate this agreement without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the recipient by certified mail, return receipt requested. In such event, the recipient agrees to use all reasonable efforts to mitigate the recipient's expenses and obligations hereunder. Also in such event, the Commission shall pay the recipient for all expenses incurred within 30 days of such notice of termination which could not by reasonable efforts of the recipient have been avoided, but not in excess of the maximum payable under this agreement.

14. TRAVEL AND PER DIEM

For purposes of payment, recipient's headquarters shall be considered the location of the recipient's office where the employees assigned responsibilities for this award are permanently assigned.

Travel not listed in the Budget section of this agreement shall require prior written authorization from the Commission Project Manager. Recipient shall be reimbursed for authorized travel and per diem on the same basis as nonrepresented state employees. A copy of the current allowable reimbursement rates can be obtained by contacting the Commission's Grants and Loans Office at (916) 654-4381.

Travel expense claims must detail expenses using the allowable rates, and recipient must sign and date the travel expense claim before submitting the travel expense claim to the Commission for payment. Expenses must be listed by trip including dates and times of departure and return. Travel expense claims and supporting receipts and expense documentation shall be attached to the recipient's Payment Request. A vehicle license number is required when claiming mileage, parking, or toll charges. Questions regarding allowable travel expenses or per diem should be addressed to the Commission Project Manager.

15. LICENSE

- The Commission shall be granted a no-cost, nonexclusive, nontransferable, irrevocable worldwide license to use or have practiced for or on behalf of the State of California inventions developed hereunder and patents or patent applications derived from such inventions. Recipient must obtain agreements to effectuate this clause with all persons or entities obtaining ownership interest in the patented subject inventions.
- The Commission makes no claim to intellectual property that existed prior to this grant and was developed without Commission funding. If applicable, the recipient gives notice that the items listed in the Intellectual Property attachment or exhibit have been developed without Commission funding and prior to the start of this grant. This list represents a brief description of the prior developed intellectual property. A detailed description of the intellectual property, as it exists on the effective date of this grant, may be necessary if Commission funds are used to further develop the listed intellectual property. This information will assist the parties to make an informed decision regarding intellectual property rights.
- The Commission shall be granted the no-cost use of the technical data first produced or specifically used in the performance of this grant.

- The Commission shall be granted a royalty-free nonexclusive, irrevocable, nontransferable license to produce, translate, publish, use and dispose of, and to authorize others to produce, translate, publish, use and dispose of all copyrightable material first produced or composed in the performance of this grant.

16. STANDARD OF PERFORMANCE

Recipient, its subcontractors and their employees, in the performance of recipient's work under this award shall be responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures used in the recipient's field.

Any costs for failure to meet the foregoing standard or to correct otherwise defective work that requires re-performance of the work, as directed by Commission Project Manager, shall be borne in total by recipient and not the Commission. The failure of a project to achieve the performance goals and objectives stated in the Work Statement is not a basis for requesting re-performance unless the work conducted by recipient and/or its subcontractors is deemed by the Commission to have failed the foregoing standard of performance.

In the event recipient/subcontractor fails to perform in accordance with the above standard:

- (1) Recipient/subcontractor will re-perform, at its own expense, any task which was not performed to the reasonable satisfaction of the Commission Project Manager. Any work re-performed pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task involved. Recipient/subcontractor shall work any overtime required to meet the deadline for the task at no additional cost to the Commission;
- (2) The Commission shall provide a new schedule for the re-performance of any task pursuant to this paragraph in the event that re-performance of a task within the original time limitations is not feasible; and
- (3) The Commission shall have the option to direct recipient/subcontractor not to re-perform any task which was not performed to the reasonable satisfaction of the Commission Project Manager pursuant to application of (1) and (2) above. In the event the Commission directs recipient/subcontractor not to re-perform a task, the Commission and recipient shall negotiate a reasonable settlement for satisfactory work performed. No previous payment shall be considered a waiver of the Commission's right to reimbursement.

Nothing contained in this section is intended to limit any of the rights or remedies which the Commission may have under law.

17. PAYMENT OF FUNDS**a. Payment Requests**

The recipient may request payment from the Commission at any time during the term of this agreement although it is preferred that payment requests be submitted with the progress reports.

Payments will generally be made on a reimbursement basis for recipient expenditures, i.e., after the recipient has paid for a service, product, supplies, or other approved budget item. No reimbursement for food or beverages shall be made other than allowable per diem charges.

As a general rule, advance payments are not allowed. The Commission, at its sole discretion, may honor advance payment subject to special conditions specified by the Commission's Grants and Loans Office.

Funds in this award have a limited period in which they must be expended. All recipient expenditures must occur prior to the end of the term of this agreement.

b. Documentation

All payment requests must be submitted using a completed Payment Request form (Exhibit A). This form must be accompanied by an itemized list of all charges and copies of all receipts or invoices necessary to document these charges for both Commission and match share. Any payment request that is submitted without the itemization will not be authorized. If the itemization or documentation is incomplete, inadequate, or inaccurate, the Commission Project Manager will inform the recipient and hold the invoice until all required information is received or corrected. Any penalties imposed on the recipient by a subcontractor because of delays in payment will be paid by the recipient.

c. Release of Funds

The Commission Project Manager will not process any payment request during the agreement term if the following conditions have not been met:

- All required reports have been submitted and are satisfactory to the Commission Project Manager.
- All applicable special conditions have been met.
- All appropriate permits or permit waivers from governmental agencies have been issued to the recipient and copies have been received by the Commission Project Manager.

- All products due have been submitted and are satisfactory to the Commission Project Manager.
- Other prepayment conditions as may be required by the Commission Project Manager have been met. Such conditions will be specified in writing ahead of time, if possible.

d. Retention

The Commission may retain up to 10 percent of any payment request or 10 percent of the total Commission award at the end of the project. After the project is complete, the recipient must submit a completed payment request form requesting release of the retention. The Commission Project Manager will review the project file and, when satisfied that the terms of the funding agreement have been fulfilled, will authorize release of the retention.

e. State Controller's Office

Payments are made by the State Controller's Office.

18. FISCAL ACCOUNTING REQUIREMENTS

The recipient shall review and comply with the administrative requirements outlined in the applicable sections of the OMB circulars incorporated by reference as part of the funding agreement. The circulars are supplemented with the following requirements:

a. Accounting and Financial Methods

The recipient shall establish a separate ledger account or fund for receipt and disbursement of Commission funds for each project funded by the Commission. Expenditure details must be maintained in accordance with the approved budget details using appropriate accounting practices.

b. Retention of Records

The recipient shall retain all project records (including financial records, progress reports, and payment requests) for a minimum of three (3) years after the project has been formally concluded, or final payment received, whichever is later, unless otherwise specified in the funding agreement.

Records for nonexpendable personal property acquired with grant funds shall be retained for three years after its final disposition.

c. Audits

Upon written request from the Commission, the recipient shall provide detailed documentation of all expenses at any time throughout the project. In addition, the recipient agrees to allow the Commission or any other agency of the state, upon written request, to have reasonable access to and the right of inspection of all records that pertain to the project during the term of this agreement and for a period of three (3) years thereafter. Further, the recipient agrees to incorporate an audit of this project within any scheduled audits, when specifically requested by the state. Recipient agrees to include a similar right to audit in any subcontract.

Recipients are strongly encouraged to conduct annual audits in accordance with the single audit concept. The recipient should provide two copies of the independent audit report and any resulting comments and correspondence to the Commission Project Manager within 30 days of the completion of such audits.

d. Match Share

If the grant Budget includes match share, the recipient's commitment of financial and personnel resources, as described in this agreement, is a required match for receipt of Commission funds. The recipient must maintain accounting records detailing the expenditure of the match share (actual cash and in-kind services), and provide complete documentation of expenditures as described under "Payment of Funds."

19. INDEMNIFICATION

The recipient agrees to indemnify, defend, and save harmless the state, its officers, agents, and employees from any and all claims and losses accruing or resulting to recipient and to any and all contractors, subcontractors, materialmen, laborers, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the recipient in the performance of this agreement.

20. DISPUTES

In the event of a dispute or grievance between recipient and the Commission regarding this agreement, the following two-step procedure shall be followed by both parties. Recipient shall continue with responsibilities under this agreement during any dispute.

a. Commission Dispute Resolution

The recipient shall first discuss the problem informally with the Commission Project Manager. If the problem cannot be resolved at this stage, the recipient must direct

the grievance together with any evidence, in writing, to the Commission Grants and Loans Officer. The grievance must state the issues in the dispute, the legal authority or other basis for the recipient's position and the remedy sought. The Commission Grants and Loans Officer and the Program Office Manager must make a determination on the problem within ten (10) working days after receipt of the written communication from the recipient. The Grants and Loans Officer shall respond in writing to the recipient, indicating a decision supported by reasons. Should the recipient disagree with the Grants and Loans Officer decision, the recipient may appeal to the second level.

The recipient must prepare a letter indicating why the Grants and Loans Officer's decision is unacceptable, attaching to it the recipient's original statement of the dispute with supporting documents, along with a copy of the Grants and Loans Officer's response. This letter shall be sent to the Executive Director at the Commission within ten (10) working days from receipt of the Grants and Loans Officer's decision. The Executive Director or designee shall meet with the recipient to review the issues raised. A written decision signed by the Executive Director or designee shall be returned to the recipient within twenty (20) working days of receipt of the recipient's letter. The Executive Director may exercise the option of presenting the decision to the Commission at a business meeting. Should the recipient disagree with the Executive Director's decision, the recipient may appeal to the Commission at a regularly scheduled business meeting. Recipient will be provided with the current procedures for placing the appeal on a Commission Business Meeting Agenda.

b. Binding Arbitration

Should the Commission's Dispute Resolution procedure described above fail to resolve a dispute or grievance to the satisfaction of the recipient, the recipient may elect to have the dispute or grievance resolved through binding arbitration. The Commission may also elect to have any dispute or grievance resolved through binding arbitration. Both parties must consent before submitting the dispute to arbitration. The arbitration proceeding shall take place in Sacramento County, California, and shall be governed by the commercial arbitration rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated. The dispute or grievance shall be resolved by one (1) arbitrator who is an expert in the particular field of the dispute or grievance. The arbitrator shall be selected in accordance with the aforementioned commercial arbitration rules. If arbitration is mutually decided by the parties, arbitration is in lieu of any court action and the decision rendered by the arbitrator shall be final (not appealable to a court through the civil process). However judgement maybe entered upon the arbitrator's decision and is enforceable in accordance with the applicable law in any court having jurisdiction over this Agreement. The demand for arbitration shall be made no later than six (6) months after the date of the termination of this agreement,

irrespective of when the dispute or grievance arose, and irrespective of the applicable statute of limitations for a suit based on the dispute or grievance.

The cost of arbitration shall be borne by the parties as follows:

- i) The AAA's administrative fees shall be borne equally by the parties;
- ii) The expense of a stenographer shall be borne by the party requesting a stenographic record;
- iii) Witness expenses for either side shall be paid by the party producing the witness;
- iv) Each party shall bear the cost of its own travel expenses;
- v) All other expenses shall be borne equally by the parties, unless the arbitrator apportions or assesses the expenses otherwise as part of his or her award.

At the option of the parties, any or all of these arbitration costs may be deducted from any balance of agreement funds. Both parties must agree, in writing, to utilize agreement funds to pay for arbitration costs.

21. WORKERS' COMPENSATION INSURANCE

- a. Recipient hereby warrants that it carries Worker's Compensation Insurance for all of its employees who will be engaged in the performance of this agreement, and agrees to furnish to the Commission Project Manager satisfactory evidence of this insurance at any time the Commission Project Manager may request.
- b. If recipient is self-insured for worker's compensation, it hereby warrants such self-insurance is permissible under the laws of the State of California and agrees to furnish to the Commission Project Manager satisfactory evidence of this insurance at any time the Commission Project Manager may request.

22. GENERAL PROVISIONS

- a. Governing Law

It is hereby understood and agreed that this agreement shall be governed by the laws of the State of California as to interpretation and performance.

- b. Independent Capacity

The recipient, and the agents and employees of the recipient, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California.

c. Assignment

Without the written consent of the Commission in the form of a formal written amendment, this agreement is not assignable or transferable by recipient either in whole or in part.

d. Timeliness

Time is of the essence in this agreement.

e. Unenforceable Provision

In the event that any provision of this agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this agreement have force and effect and shall not be affected thereby.

f. Waiver

No waiver of any breach of this agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law.

g. Assurances

The Commission reserves the right to seek further written assurances from the recipient and its team that the work of the project under this agreement will be performed consistent with the terms of the agreement.

h. Change in Business

(1) Recipient shall promptly notify the Commission of the occurrence of each of the following:

- (a) A change of address.
- (b) A change in the business name or ownership.
- (c) The existence of any litigation or other legal proceeding affecting the project.
- (d) The occurrence of any casualty or other loss to project personnel, equipment or third parties of a type commonly covered by insurance.
- (e) Receipt of notice of any claim or potential claim against recipient for patent, copyright, trademark, service mark and/or trade secret infringement that could affect the Commission's rights.

- (2) Recipient shall not change or reorganize the type of business entity under which it does business except upon prior written notification to the Commission. A change of business entity or name change requires an amendment assigning or novating the agreement to the changed entity. In the event the Commission is not satisfied that the new entity can perform as the original recipient, the Commission may terminate this agreement as provided in the termination paragraph.

i. Survival of Terms

It is understood and agreed that certain provisions shall survive the completion or termination date of this agreement for any reason. The provisions include, but are not limited to:

- “Payments of Funds”
- “Equipment”
- “Change in Business”
- “Disputes”
- “Termination”
- “Audit”
- “Indemnification”
- “License”
- “Fiscal Accounting Requirements”

23. CERTIFICATIONS & COMPLIANCE

a. Federal, State & Local Laws

Recipient shall comply with all applicable federal, state and local laws, rules and regulations.

b. Nondiscrimination Statement of Compliance

During the performance of this agreement, recipient and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Recipient and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Recipient and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990, set forth in chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are

incorporated into this agreement by reference and made a part of it as if set forth in full. Recipient and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

The recipient shall include the nondiscrimination and compliance provisions of this article in all subcontracts to perform work under this agreement.

c. Drug Free Workplace Certification

By signing this agreement, the recipient hereby certifies under penalty of perjury under the laws of the State of California that the recipient will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- i) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations as required by Government Code Section 8355(a).
- ii) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - The dangers of drug abuse in the workplace;
 - The person's or organization's policy of maintaining a drug-free workplace;
 - Any available counseling, rehabilitation, and employee assistance programs; and
 - Penalties that may be imposed upon employees for drug abuse violations.
- iii) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed project:
 - Will receive a copy of the company's drug-free policy statement;
 - Will agree to abide by the terms of the company's statement as a condition of employment on the project.

Failure to comply with these requirements may result in suspension of payments under the agreement or termination of the agreement or both, and the recipient may be ineligible for any future state awards if the Commission determines that any of the following has occurred: (1) the recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

d. Recycling Certification

The recipient shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post consumer waste and secondary waste as defined in the Public Contract Code, Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this agreement, regardless of whether the product meets the required recycled product percentage as defined in the Public Contract Code, Sections 12161 and 12200. Recipient may certify that the product contains zero recycled content.

e. Child Support Compliance Act (Applicable to California Employers)

For any agreement in excess of \$100,000, the recipient acknowledges that:

- i) It recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- ii) To the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

f. Americans with Disabilities Act

By signing this agreement, recipient assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101, et seq.), which prohibits discrimination on the basis of disability, as well as applicable regulations and guidelines issued pursuant to the ADA.

g. Union Activity

By signing this agreement, the recipient hereby certifies that recipient will not use grant funds for any expenses to assist, promote, or deter union organizing. Any recipient that makes expenditures to assist, promote, or deter union organizing shall maintain records sufficient to show that state funds have not been used for those expenditures. (Government Code Section 16645.2)

24. ADDITIONAL REQUIREMENTS FOR PEAK LOAD REDUCTION PROGRAM GRANTS**a. Project Delay Notification**

The Recipient is required to notify the Commission Project Manager if circumstances occur which will delay the project so that project work tasks cannot be completed within the timeframes specified in the Work Statement. The Recipient is required to notify the Commission Project Manager in writing within five (5) working days of the occurrence of the delay.

b. Project Extensions

Recipient must complete work by the dates indicated in the scope of work. The Recipient has an obligation to let the Commission Project Manager know of any potential delays in deliverables as soon as they learn of any obstacles that might delay the project. The Recipient should show it neither knew nor had reason to know of the circumstances that led to the delay. If the Recipient does not meet the applicable deadlines, the award may be terminated and the funds reallocated. On the other hand, the Commission is committed to working with the Recipient to quickly resolve or remove any factors leading to delays. If a project or portion of the scope of work is not completed by the agreed upon dates, due to extenuating circumstances, the Recipient may make a written request to extend the deadlines. The Commission's Energy Efficiency Committee may extend the dates at its discretion. An extension may be granted by the Committee if the following conditions exist:

- The Recipient documents that circumstances beyond its control (such as decisions by other regulatory bodies or significant changes in market conditions) prevent the work from being completed by the applicable deadlines.
- The Recipient must show it has taken all possible actions to mitigate the delay and is committed to make every effort and apply resources to meet the new deadline.
- The requested extension would otherwise comply with the program legislation and the terms of this Agreement.

c. Program Evaluation, Project Monitoring, and Verification

Recipients will cooperate with the evaluation efforts of the Commission and its monitoring, verification, and evaluation (MV&E) contractor. Recipients will provide access to facilities where demand-reducing measures have been installed and/or implemented and provide associated records. If the Recipient is not the final recipient of demand reducing equipment, the Recipient is responsible to

ensure the ultimate recipient fulfills this obligation. Evaluation activities may occur from the time that the agreements are executed until January 1, 2005. The Commission or the MV&E contractor may inspect the sites prior to installation of measures to establish baselines and may inspect the sites after installation to verify installations. The Commission or the MV&E contractor may install monitoring equipment at any time during the duration of the contract.

Recipients are responsible for providing lists of customers, project sites and incentives to the Commission and the MV&E contractor. In addition, recipient and/or recipient's customers must provide all information necessary for an independent MV&E reviewer to reproduce the estimated demand reduction. The recipient must have documentation available for review and use by the Commission and the Commission's MV&E contractor as it applies to the specific agreement:

While a complete list of the data necessary to evaluate the programs cannot be included here, the general data requirements and obligation of recipients are presented in the monitoring and verification protocols available on the Commission's web-site. Additional data requirements specific to the measurement of savings from each project may be added as a result of coordination between each project manager, the Commission and contractor.

d. Random Audits, Record Retention and Access to Facilities

Upon written request from the Commission, the recipient shall provide detailed documentation of all expenses, allow the Commission or its agent access to facilities and records, and allow the Commission or its agent to collect data needed to measure and verify peak electricity demand reductions (this may include but is not limited to utility bills, metering data, facility equipment surveys, information on operational practices and site occupancy levels). The recipient agrees to give the Commission or its agent access to install, read and remove electricity meters. Further, if requested, the recipient must agree to provide to the Commission or its agent associated data from a period prior to the start of the project as necessary to establish baselines. In addition, the recipient must agree to allow the Commission, its agent, or any other agency of the state, upon written request, to have reasonable access to and the right of inspection of all records that pertain to the project and to the recipients' energy use during the term of the agreement and for a period of three years thereafter. Further, the recipient must agree to incorporate an audit of this project within any scheduled audits, when specifically requested by the state. Recipient must agree to include a similar right to audit in any subcontract or subgrant. The recipient shall retain all project records (including financial records, progress reports, payment requests, and peak electricity demand reduction documentation) for a minimum of three years after the project has been formally concluded, or final payment received, whichever is later, unless otherwise specified in the funding award agreement.

e. Notification of Nonoperation

Recipient shall notify Commission Contractor Manager in writing immediately if Recipient has reason to believe that the project or any project within a program may become non-operational during the term of this Agreement.

f. Enforcement Action

(1) Recovery of Overpayment

The Commission's Energy Efficiency Committee, with the concurrence of the Commission, may direct the Commission's Office of Chief Counsel to commence formal legal action against any Recipient or former Recipient to recover any portion of a Grant award that the Committee determines the Recipient or former Recipient was not otherwise entitled to receive.

(2) Fraud and Misrepresentation

The Committee may initiate an investigation of any Recipient which the Committee has reason to believe may have misstated, falsified, or misrepresented information in applying for a Grant, invoicing for a Grant payment, or in reporting any information as required by the Overall Program Guidelines or applicable Program Element Guideline. Based on the results of the investigation, the Committee may take any action it deems appropriate, including, but not limited to, termination of the Grant, recovery of any overpayment, and with the concurrence of the Commission, recommending the initiation of an Attorney General investigation and prosecution pursuant to Government Code sections 12650, et seq., or other provisions of law.

AWARD # - -

EXHIBIT A
PAYMENT REQUEST FORM

FINANCIAL STATUS REPORT OR PAYMENT REQUEST

Grant

CEC 211-(a) (Rev. 1/01)

Instructions are on the reverse

Payment Request No.:

Recipient (Name and Address)		Type of Request <input type="checkbox"/> Reimbursement <input type="checkbox"/> Status Report Only <input type="checkbox"/> Release Retention		Amount of this Request \$ _____	
		Period Covered by this Request _____ to _____		Funding History Funds Requested to Date: \$ _____ Funds Received to Date: \$ _____ Expenses to Date: \$ _____ Funds on Hand: \$ _____ Interest Earned to Date: \$ _____	
Grant No.	Recipient ID No.	Approved Project Term _____ to _____			
ENERGY COMMISSION SHARE Line Item	Budget	Expenses this Period	Expenses to Date	Obligations Not Yet Paid	Remaining Balance
Personnel					
Fringe Benefits					
Travel					
Equipment					
Supplies					
Contractual					
Construction					
Other					
Indirect					
TOTAL					
MATCH SHARE Line Item	Budget	Expenses this Period	Expenses to Date	Obligations Not Yet Paid	Remaining Balance
Personnel					
Fringe Benefits					
Travel					
Equipment					
Supplies					
Contractual					
Construction					
Other					
Indirect					
TOTAL					
GRAND TOTAL					

RECIPIENT CERTIFICATION		ENERGY COMMISSION USE ONLY (-NS-)	
I certify to the best of my knowledge and belief that this report is correct and complete and all outlays and obligations are for the purposes set forth in the funding agreement. No grant funds will be used to assist, promote, or deter union organizing.		Amount Authorized	
Signature of Authorized Certifying Officer	Date	Retention Yes _____ No _____	
Type or Print Name and Title	Phone	Fiscal Year	
ENERGY COMMISSION APPROVALS		Appropriation Code	
Commission Project Manager	Date	ACCOUNTING OFFICE USE ONLY	
Commission Program Manager	Date	Retention	
Grants Office	Date	Amount Scheduled	

INSTRUCTIONS

Payment Request No.: Begin with the number 1 on your first payment request and consecutively number each subsequent payment request. The last payment request should include the notation, "Final."

Recipient (Name and Complete Address): Same as "Recipient" on the Grant Agreement. Address should include the city, state, and zip code.

Type of Request: Indicate if this is a "Reimbursement" or "Status Report Only." Be sure to provide backup documentation. If no funds are being requested, check "Status Report Only."

Amount of this Request: This line shows the amount currently being requested. Indicate the amount being requested.

Period Covered by this Report: The time period covered by this request. The first day of the period should be the day after the last day covered by your previous report. Example: 1/14/94 to 3/31/94.

Grant No.: Same as "Grant Number" on the Grant Agreement. This is the eight digit code assigned by the Energy Commission (example 961-93-000).

Recipient ID No.: This space is for an account number or other identifier that may be assigned by the recipient (optional).

Approved Project Term: This is the entire project period beginning with the date the project starts through the end date. This date should match the "Term" on the Grant Agreement unless you have received a term extension.

Total Funds Requested to Date: Show the total of all funds requested from the Energy Commission prior to this request.

Funds Received to Date: Show the total amount of funds received from the Energy Commission prior to this request. "Funds Requested to Date" minus any retention withheld equals "Funds Received to date".

Total Expenses to Date: Show the total expenses from the beginning of the project through and including the period covered by this report. This amount should be the same as the "Grand Total" expenses to date.

Funds on Hand: This should be filled in only if you have received any advance funds from the Commission. If you have, show the balance of funds received. ("Funds Received to Date" minus "Expenses to Date" equals "Funds on Hand.")

Interest Earned to Date: Show all interest earned on previously advanced funds.

Line Items: The following budget categories apply to all expenditures invoiced.

- **Budget:** Show by line item the budget as shown in the Grant Agreement.
- **Expenses this Period:** Show by line item the actual payments made by the recipient during the period covered by this report.
- **Expenses to Date:** Show by line item the cumulative total of all expenses from the beginning of the project through and including the period covered by this report.
- **Obligations Not Yet Paid:** Show by line item all funds obligated on purchase orders, contracts, etc. for which you have received an invoice but have not yet paid.
- **Remaining Balance:** Show by line item the funds available for expenses or obligations. "Budget" minus "Expenses to Date" minus "Obligations Not Yet Paid" equals "Remaining Balance."

Certification: Name, title and signature of authorized certifying official (usually the grant recipient's project manager).

Submit original and one copy to:

California Energy Commission
Accounting Office
1516 Ninth Street, MS # 2
Sacramento, CA 95814